HELTON v. SOVEREIGN CAMP OF WOODMEN OF THE WORLD.

4-2773

Opinion delivered December 19, 1932.

1. INSURANCE—VALIDITY OF SURRENDER OF BENEFIT CERTIFICATE.—Surrender of a benefit certificate for a paid-up certificate for a smaller sum, thereby releasing insured from payment of further assessments, *held* binding.
2. COSTS—ON APPEAL.—Where appellant did not recover any greater amount than the appellee offered to confess judgment for in the trial court, judgment for costs of the appeal will be awarded against the appellee.

Appeal from Jefferson Circuit Court; *T. G. Parham*, Judge; affirmed.

STATEMENT BY THE COURT.

This is an action on a benefit certificate issued by appellee's order to William S. Helton on the 16th day of January, 1896, with his wife, Mrs. Fannie S. Helton, now deceased, named as beneficiary in said certificate No. 1740, Ark., in the sum of $2,000 to be paid upon the death of the member.

The certificate provided on its face that it was issued and accepted subject to all the conditions on the back of it and all the conditions named in the constitution and bylaws of the fraternity, and liable to forfeiture if the member should not comply with the said conditions, constitution and such by-laws and rules as might be adopted by the Sovereign Camp.

The complaint alleged that the policy was duly issued in the number and amount of the benefit certificate, the death of the insured, the liability of the order to the payment of the amount of the certificate to the beneficiary; that the member had complied with all the terms and conditions of the contract and paid all dues, assessments and obligations as required; that proof of death had been furnished and payment of the certificate demanded; and that the appellee had failed and refused to pay the amount of the certificate and was indebted thereon to said beneficiary in the sum of $2,000 with interest, etc., for which judgment was prayed.

The answer admitted the allegations of the complaint as to the issuance of the benefit certificate and the performance of the conditions, the payment of the premiums by the insured during his lifetime, and that he was in good standing at the time of his death; but alleged that the promise to pay the beneficiary the sum of $2,000 was not absolute, but was contingent upon the compliance by the member with all the conditions, provisions and requirements of the benefit certificate and the constitution, laws and bylaws of the appellee order, if the same were in effect at the time of the issuance of the benefit certificate and as thereafter amended; denied the compliance with these conditions and provisions by the insured, and alleged that the certificate No. 1740, Ark., was not in force at the time of the death of the member, that the association did not at his death become indebted and was not indebted to the plaintiff in the sum of $2,000 or any other sum under or on account of said benefit certificate No. 1740, Ark.; admitted that no part of the $2,000 had been paid, and, further answering, it alleged that said benefit certificate was issued and accepted subject to the conditions on the back of same and subject also to the constitution, bylaws, etc., and was liable to forfeiture if the member did not comply with all of them, etc.; alleged that in the month of July, 1919, it amended its constitution and bylaws, becoming effective December 31, 1919, § 60, thereof so as to fix an advanced or increased rate of assessment which was required to be paid by every member of the order, including William S. Helton, and that, if the member did not elect to pay such advanced or increased rate of assessment, he could continue to pay the rate of assessment theretofore required of him, "and that by so doing he thereby elected the charging of a lien against his certificate in such an amount as was found to be necessary to cover the deficiency in his contributions growing out of his continuing to pay the old rate," and in such event the provision in the certificate for the erection of a monument should be canceled; that Helton continued

the payment of the old rate consenting thereby to the charging of the lien and the cancellation of the provision for the erection of the monument; that the amount of the lien charged against the certificate was $440 with interest at 4 per cent. to be paid annually or monthly, otherwise to accumulate at 5 per cent.; that Helton did not pay the lien for the interest, which at the time of his death amounted to $300.57; that of the amount of the annual assessments thereafter made there remained unpaid to be deducted from the amount due the beneficiary under the certificate $62.53; that one monthly installment was credited upon the certificate of every member from 1921 to 1926, and that the amount credited with interest was $24.46; and that there was credited to the said insured an additional paid-up insurance aggregating $14.92; that the net amount of the death benefit due and payable to plaintiff on account of benefit certificate No. 1740, Ark., if the association was liable for the payment thereof, would be $1,236.28; but, that no payment of assessments was made thereon after April 29, 1929, and that said certificate was null and void after June 1, 1929, by reason of the nonpayment of the May, 1929, premium, and all subsequent assessments and installments on the said certificate.

It was further alleged that the said Helton made a written application, whereby he surrendered the said benefit certificate No. 1740, Ark., and released the association for himself and his beneficiaries from all liability thereunder, exchanging same for paid-up certificate in the sum of $868, same to become effective on the first day of May, 1929, upon which paid-up certificate no payments or assessments were required to be made; that, upon the surrender and cancellation of the old benefit certificate, a paid-up certificate dated April 25, 1929, was issued and became effective May 1, 1929, in the maximum sum of $868, and in which plaintiff Fannie S. Helton, wife of said William S. Helton, was named beneficiary; that, upon the death of Helton on November 8, 1930, there became due Fannie S. Helton the amount of said

paid-up certificate in said sum together with a small amount of additional insurance in the sum of $14.92, in all $882.92 for which the appellee admitted liability and its willingness to pay upon the surrender of the new benefit certificate, which had been requested and demanded. This amount was tendered to the court and an order prayed authorizing and directing that it be paid to the clerk of the court for the use and benefit of the plaintiff and said order be discharged from all further liability on both certificates.

A reply was filed denying all the allegations of the answer.

The testimony was introduced, and, after a hearing, the court, the case being tried without a jury, was asked to and did make special findings of the facts and declarations of law and rendered judgment for the amount appellee offered to confess judgment for, and from the judgment the appeal is prosecuted.

C. E. Snuggs, for appellant.

H. M. Jacoway, Cooper Jacoway and *Lee Miles,* for appellee.

KIRBY, J., (after stating the facts). Appellant insists that insured had complied with all the conditions of the contract, had reached the age of 70 years and was entitled to a paid-up certificate for the amount of the contract of insurance, had a vested interest therein which could not be changed by any new bylaws or assessments; and that any agreement for the paid-up certificate for a less amount was without consideration and void, and that the court erred in its finding and judgment that the benefit certificate issued to Helton, No. 1740, Ark., upon which this suit was instituted, had been surrendered by the insured during his lifetime, and that there was no liability thereunder.

Said benefit certificate No. 1740, Ark., contains these provisions: "Payments to cease after 20 years," and "His agreement to pay all assessments and dues that may be levied during the time he shall remain a member of the Woodmen of the World." The first clause "Pay-

ments to cease after 20 years'' is a marginal notation placed on the policy before its execution and delivery, while the latter is a general provision appearing in the body of the certificate by reference and doubtless appearing in every type of certificate issued to members. Provision is made for the issuance of a paid-up certificate also, and the testimony shows and the court found that a paid-up certificate was issued to the insured upon his request, and, although it was for a smaller amount than the original certificate and for a less amount than appellant now insists was due thereunder, such certificate was issued and delivered to the insured during his lifetime and accepted by him, and there was no fraud shown or alleged in its procurement. The member was doubtless liable under the provisions of the policy above set out to pay all assessments and dues during the time he remained a member of the Woodmen of the World, and his acceptance of the paid-up certificate in settlement of his rights under the original certificate cannot be said to have been made without consideration, since he could have been required to pay assessments or dues duly levied so long as he remained a member of the order under the provision of the policy, regardless of the notation ''payments to cease after 20 years,'' which doubtless was limited to the regular annual or monthly payments required for keeping the insurance in force. The regular assessments and dues had no relation to any others that might be properly levied under the constitution and bylaws during the time he remained a member.

Appellant did not recover or show any greater amount to be due him than the amount for which in its answer the appellee offered to confess judgment, and the court did not err, having found only that amount to be due, in rendering judgment therefor and for the costs as the law provides.

We find no error in the record, and the judgment is affirmed.